

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEONTAE GORDON,

Plaintiff,

Case No. 1:12-cv-295

v

HON. JANET T. NEFF

UNKNOWN BENSON, et al.,

Defendant.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving a First Amendment retaliation claim. All Defendants but Defendant Little have been dismissed from the case, either on screening (Dkt 8) or by stipulation (Dkt 112). Due to Defendant Little's lack of participation, the Magistrate Judge issued an order to show cause (Dkt 116), to which Defendant Little failed to respond. Default was entered against Defendant Little on June 2, 2014 (Dkt 123), and Plaintiff moved for entry of default judgment against Defendant Little for compensatory and punitive damages, as well as costs and fees (Dkt 124). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court grant in part and deny in part Plaintiff's motion (Dkt 129). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 131), and Plaintiff has since filed a motion to amend/correct his objections (Dkt 132). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and

Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff argues in his objections that the Magistrate Judge erred in concluding that he cannot recover compensatory damages. Specifically, Plaintiff contends that the physical injury requirement set forth in 42 U.S.C. § 1997e(e) does not apply to First Amendment claims. The Sixth Circuit Court of Appeals has not definitively decided the issue, and the case law from other circuits is conflicting. *See LaFountain v. Martin*, No. 1:07-cv-76, 2010 WL 2640417, at *3 (W.D. Mich. June 30, 2010) (Maloney, C.J.) (cases cited therein); *Swackhammer v. Goodspeed*, No. 4:03-CV-82, 2009 WL 189854, at *2 (W.D. Mich. Jan. 26, 2009).

Here, however, even assuming arguendo that the limitation on damages set forth in § 1997e(e) does not apply to his First Amendment claims, Plaintiff's objection nonetheless fails to demonstrate that a different result is warranted where the Magistrate Judge further determined that Plaintiff failed to demonstrate that he suffered any actual loss or injury for which compensatory damages are appropriate. Plaintiff failed to address the Magistrate Judge's determination in either his original objections or his amended objections. Therefore, this Court denies Plaintiff's objection regarding compensatory damages.

Next, Plaintiff objects to the Magistrate Judge's recommendation to award Plaintiff \$1,000 in punitive damages instead of the \$10,000 he sought. In calculating the punitive damages award, the Magistrate Judge relied in part on *McKinney v. Steele*, No. 1:13-cv-50, 2014 WL 1875036 (W.D. Mich., May 8, 2014). Plaintiff essentially contends that reliance on *McKinney* was error because the defendant's conduct in *McKinney* was not as reprehensible as Defendant Little's conduct in this case. Plaintiff fails to acknowledge, however, that the fundamental issue in *McKinney* is virtually

identical to the matter at hand, i.e., allegations of non-physical retaliation. Plaintiff does not assert any other error in the remainder of the Magistrate Judge's thorough punitive-damages analysis, and this Court is not persuaded that the Magistrate Judge erred in her punitive damages recommendation.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court, and enters a Default Judgment consistent with this Opinion and Order. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of the decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (Dkts 131-32) are DENIED and the Report and Recommendation (Dkt 129) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion for Entry of Default Judgment (Dkt 124) is GRANTED IN PART and DENIED IN PART, for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the decision would not be taken in good faith.

Dated: March 4, 2015

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge